

**FILED**

**APR 13 2017**

Clerk, U.S. District Court  
District of Montana  
Billings

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

<b>UNITED STATES OF AMERICA,</b>	<b>CR 16-05-BLG-SPW-04</b>
<b>Plaintiff,</b>	
<b>vs.</b>	<b>ORDER</b>
<b>KENNETH GEORGE KRAMER,</b>	
<b>Defendant.</b>	

Defendant Kenneth George Kramer has moved the Court for an in-camera review of certain United States' witnesses Pre-Sentence Reports. (Doc. 208). Kramer's request for information includes each individual's entire criminal history, possible drug addictions, mental health history, financial conditions and any of such person's "statements about the offense." (*Id.* at 2). The United States does not object. (*Id.* at 3).


Under Ninth Circuit law, disclosure of exculpatory evidence contained in a key witness's presentence report is required under *Brady v. Maryland*, 373 U.S. 83

(1963). See *United States v. Alvarez*, 358 F.3d 1194, 1207 (9th Cir.2004) (“While a criminal defendant has no constitutional right to examine presentence reports, he is nevertheless entitled to disclosure of *Brady* material contained therein.”). To conform with *Brady*’s requirements, the Ninth Circuit has stated that “trial judges have discretion either to make an in camera inspection of the materials or to rely on an examination by a probation officer.” *Id.* at 1207-1208. Accordingly, this Court will review Merrill Clark Gardner, Brett Wade Clouse, and Derek Rhinehart’s Pre-Sentence Reports and Kevin Patrick Ferguson’s draft Pre-Sentence Report *in camera* to determine whether they contain any exculpatory information to be disclosed to Kramer. In the event any exculpatory evidence is discovered, the Court will provide the redacted Pre-Sentence Reports to counsel and seal them in the court record. Unredacted Pre-Sentence Reports will be filed under seal with no access by counsel for appeal purposes.

Under the same motion, Kramer seeks “copies of the reasons for the sentences pronounced, which are sealed.” (Doc. 208 at 2). The Court’s reasons for the sentences issued do not constitute *Brady* material and Kramer has provided no additional legal support for this request. Accordingly, Kramer’s request is denied.

For the foregoing reasons, Kramer's Motion for In-Camera Review of Government Witnesses' Presentence Reports (Doc. 208) is GRANTED in part and DENIED in part.

DATED this 19<sup>th</sup> day of April 2017.

  
SUSAN P. WATTERS  
United States District Judge